

Serial No. 75/460,970

4/19/01

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Paper No. 16
JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Innovative Marble & Tile Inc.

Serial No. 75/460,970

Request for Reconsideration

Myron Amer for applicant.

Stacey Johnson, Trademark Examining Attorney, Law Office
113 (Meryl Hershkowitz, Managing Attorney).

Before Quinn, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Board, on March 7, 2001, affirmed the refusal to register on the ground that the specimens do not show use of the mark in connection with the services recited in the application.

Applicant now seeks reconsideration of this decision.

The first item raised by applicant concerns the recitation of services. The recitation referred to in the

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Board's decision is taken exactly as it appears in the amendment filed by applicant on August 16, 1999. That is the reason why a "[sic]" was used when the Board referred to the recitation. It now appears that the term "nature" should be substituted for "name" so that the recitation reads as follows: "providing product information services for others in the nature of printed materials concerning the source of ceramic and porcelain tile, marble, granite, limestone and agglomerates." The recitation has been changed accordingly.

This recitation of services in International Class 35 must control in considering the acceptability of the specimens for registration in that class. In its request for reconsideration, applicant recognizes that some of the specimens show, as pointed out by the Board in the original opinion, promotion of products sold by applicant itself. Applicant goes on, however, to focus its attention on one of the other specimens:

The specimen of record which supports the International Class 35 selection is NOT the ClipperMagazine advertisement noted at decision page 5, line 1. This advertisement was used in lieu of a photograph showing the display of IMT ITALIA as a showroom sign, and it is the sign which is the supporting specimen and the reference adjacent the sign to "Buy direct from importer."

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In considering this specimen in the original opinion, the Board characterized it as follows:

The advertisement is for applicant's "warehouse showroom" which, the advertisement indicates, is "now open to the public...now buy below retail and save." Although this advertisement indicates "buy direct from importer" and shows the mark used in connection with applicant's sale of imported marble, porcelain granite and ceramic, there is no reference whatsoever to the services of providing information for others about these products.

We stand by our assessment that this specimen, even if used as a showroom sign, does not support registration of the applied-for mark in connection with the particular services recited in the application.

The request for reconsideration is denied, and the Board's decision dated March 7, 2001 stands.